

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.3390 Petitions for Alternative Allocation or Apportionment (IIITA Section 304(f))
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TITLE 86: REVENUE

**PART 100
INCOME TAX**

NOTE: The following corrections may need to be made to this rule if and when it is amended:

1. In subsection (c), the sentence starting "The party (the Director)...has the burden or going forward"--should the "or" be "of"?
2. In subsection (d), need to change name of office from "Legal Services Bureau" to "Legal Services Office".
3. In subsection (i)(3), the sentence "The taxpayer may seed administrative...". Should "seed" be changed to "seek"?
4. In the last sentence of (i)(3), "...final administrative decision by the Department", should the word "by" be changed to "of"?

Section 100.3390 Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))

- a) In general. IITA Section 304(f) provides that if the allocation and apportionment provisions of IITA Section 304 (a) through (e) do not fairly represent the extent of the person's business activity in this State, the person may petition for or the Director may require, in respect of all or any part of the person's business activity, if reasonable:
 - 1) separate accounting;
 - 2) the exclusion of any one or more of the factors;
 - 3) the inclusion of one or more additional factors which will fairly represent the person's business activity in this State; or
 - 4) the employment of any other method to effectuate an equitable allocation and apportionment of the person's income.
- b) The petition procedures provided in this Section are exclusive means by which a taxpayer may petition for an alternative apportionment formula. Any attempt to invoke an alternative apportionment formula by a method or procedure other than as specified in this Section shall not be considered a valid petition under IITA Section 304(f). Pursuant to Section 304(f), the Director has sole and exclusive authority to grant a petition for an alternative apportionment formula.
- c) Burden of Proof. A departure from the required apportionment method is allowed only where such methods do not accurately and fairly reflect business activity in Illinois. An alternative apportionment method may not be invoked, either by the Director or by a taxpayer, merely because it reaches a different apportionment percentage than the required statutory formula. However, if the application of the statutory formula will lead to a grossly distorted result in a particular case, a fair and accurate alternative method is appropriate. The party (the Director or the taxpayer) seeking to utilize an alternative apportionment method has the burden of going forward with the evidence and proving by clear and cogent evidence that the statutory formula results in the taxation of extraterritorial values and operates unreasonably and arbitrarily in attributing to Illinois a percentage of income which is out of all proportion to the business transacted in this State. In addition, the party seeking to use an alternative apportionment formula must go forward with the evidence and prove that the proposed alternative apportionment method fairly and accurately apportions income to Illinois based upon business activity in this State.
- d) Filing Procedure. A petition for alternative apportionment must be clearly labeled "Petition for Alternative Allocation or Apportionment" and be supported by sufficient facts and information to allow the Director to determine whether the taxpayer has met the burden of proof required under subsection (b) above. A petition will be summarily rejected if its sole basis for support rests on the fact that an alternative method reaches a different apportionment percentage than the required statutory formula. Petitions must be submitted to:

Illinois Department of Revenue
Legal Services Bureau/Income Tax
101 W. Jefferson Street
Springfield IL 62794-9001

- e) **Timely Filed Petitions.** A taxpayer petition for use of a separate accounting method or any other alternative apportionment method will not be considered by the Director unless such petition has been timely filed. A taxpayer who petitions the Director for an alternative apportionment formula does so subject to the Department's right to verify, by audit of the taxpayer's return and supporting books and records within the applicable statute of limitations, the facts submitted as the basis of the petition. A petition for alternative allocation or apportionment is timely filed if the petition is filed:
- 1) 120 days prior to the due date of the tax return (including extensions) for which permission to use such alternative method is sought. A taxpayer who does not petition more than 120 days prior to the due date of the original return must file the return and pay tax according to the statutorily approved allocation or apportionment method.
 - 2) as an attachment to a return amending an original return which was filed using the statutory allocation and apportionment rules. A taxpayer who has not filed a petition for alternative apportionment under subsection (e)(1) above, or whose subsection (e)(1) petition has been rejected, may thereafter file such petition with an amended return and the Department will consider the petition along with any other issues raised in the claim for refund pursuant to the procedures set forth at Section 100.9110 of this Part.
 - 3) as part of a protest to a notice of deficiency issued as a result of the audit of the taxpayer's return and supporting books and records; provided that the audit adjustments being protested result in the need for the petition for alternative apportionment. Alternative apportionment may not be raised in a protest to a notice of deficiency if such petition could have been submitted under subsection (e)(1) or (e)(2) above (i.e., the petition for an alternative apportionment formula is not necessitated by the proposed adjustments made to the taxpayer's return during the course of the audit).
- f) **Consideration of Petition**
- 1) After consideration of a petition for alternative apportionment under subsections (e)(1) or (e)(2) above, the Director will issue a ruling letter advising the taxpayer that the petition has been accepted, partially accepted or rejected.
 - 2) If the petition is partially accepted (i.e., where the Director finds that the taxpayer has established that apportionment relief is warranted but disagrees with the taxpayer's proposed alternative apportionment method) the Director shall so notify the taxpayer of the reasons for rejecting the proposed alternative apportionment formula. The taxpayer may then submit a modified alternative apportionment formula for the Director's approval, or protest the Director's

rejection of the proposed alternative apportionment formula by requesting an administrative hearing on the matter.

- 3) If a taxpayer's petition is rejected in its entirety, the Director will state the reasons for the rejection of the petition.
- g) **Appeal Procedures.** A denial of a petition for alternative apportionment which petition was submitted under subsections (e)(1) or (e)(2) above is not a final administrative decision and may be protested as provided herein. If the petition is submitted prior to the filing of the original return under subsection (e)(1) above, and is denied, the taxpayer must file and pay tax using the statutory formula. A taxpayer who has filed using the statutory formula after denial of a petition for alternative apportionment may file an amended return claiming a refund based upon the original petition. Additional information in support of the taxpayer's petition for alternative apportionment may be submitted for the Director's reconsideration at that time. If the claim for refund is denied, the taxpayer may file a protest pursuant to IITA Section 910 and request an administrative hearing solely on the issue of alternative apportionment or in addition to other issues raised in the claim for refund.
- h) **Bifurcated Administrative Hearings**
- 1) The taxpayer will have waived the right to raise alternative apportionment as an issue in the administrative hearing if taxpayer has not complied with procedures set forth in this Section.
 - 2) Where a protest to a notice of deficiency or a claim denial raises the issue of alternative apportionment in addition to other issues, the administrative hearing shall proceed in two distinct phases.
 - A) All issues other than the petition for alternative apportionment, which have properly been raised in the protest to the notice of deficiency or claim denial, shall be considered first. The ALJ shall conduct the hearing and the taxpayer shall present its case. The ALJ shall not accept any evidence with regard to alternative apportionment until the taxpayer and the Department have rested their case with regard to all other issues raised in the protest to the notice of deficiency or claim denial.
 - B) When the taxpayer and the Department have rested with regard to all other issues raised in the protest of the notice of deficiency or claim denial, the ALJ shall conduct the hearing and the taxpayer shall present its case in support of its petition for alternative apportionment. Evidence allowed into the record with regard to all other issues raised in the protest of the notice of deficiency or claim denial shall be deemed to be allowed into the record with regard to the protest to the Director's denial of alternative apportionment and need not be resubmitted. However, on any issue as to which evidence has already been allowed with regard to the protest of the notice of deficiency or claim denial, the ALJ shall allow submission of additional evidence on the issue of alternative apportionment.

- C) In such bifurcated hearings, the ALJ shall issue a two-part recommendation to the Director. The first part of the recommendation shall address all other issues raised in the protest of the notice of deficiency or claim denial and the second part of the recommendation shall be a determination of whether the taxpayer has met its burden of proof under subsection (b) above.

i) Director's Decision

- 1) The Director will consider the ALJ's recommendation. If the Director agrees that the taxpayer has met his burden of proof under subsection (b) above and that the formula proposed by the taxpayer and recommended by the ALJ fairly and accurately apportions income to Illinois based upon the taxpayer's business activity in this State, the Director will accept the recommendation of the ALJ and it will become final.
- 2) If the Director, after considering the ALJ's decision, agrees that the taxpayer has met its burden of proof under subsection (b) above, but finds that the proposed alternative apportionment formula does not fairly and accurately apportion income to Illinois based upon the taxpayer's business activity in this State, the Director's decision will so state and will provide an appropriate alternative apportionment formula. The Director's decision will be final for purposes of administrative review.
- 3) If the Director finds that the taxpayer has not established by clear and cogent evidence that the statutory formula results in the taxation of extraterritorial values, and operates unreasonably and arbitrarily in attributing to Illinois a percentage of income which is out of all proportion to the business transacted in this State and also finds that the taxpayer's proposed alternative apportionment formula is not permissible, the Director shall issue his decision so stating. The taxpayer may seek administrative review of this final decision of the Director. If the court finds that the taxpayer has met the burden of proof under subsection (b) that an alternative apportionment formula is warranted but agrees with the Director that the alternative apportionment formula proposed by the taxpayer does not fairly and accurately reflect the taxpayer's business activities in this State, and the case is remanded to the Department, the Director shall provide an appropriate alternative apportionment formula. The designation of a formula by the Director is a final administrative decision by the Department subject to administrative review by the court.

(Source: Added at 17 Ill. Reg. 19632, effective November 1, 1993)